

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 447 of 1990

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHANKERLAL KANAIYALAL NARWELE

Versus

DIVISIONAL SECURITY COMMISSIONER

Appearance:

MR YN OZA for Petitioner
NOTICE SERVED for Respondent No. 1
MR JC SHETH for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/01/2000

ORAL JUDGEMENT

1. The petitioner in the present petition challenges the order of his dismissal from service passed by the disciplinary authority at Annexure-A to the petition and confirmed by the appellate authority at Annexure-D to the

petition.

2. The petitioner was a constable in the Railway Protection Force at the relevant point of time, who is alleged to have aided and abetted a co-delinquent in committing theft of railway material valued at Rs.14438/from the Railway Store, Pratapnagar, on the night of 20/21st June 1988. As a consequence of a criminal complaint and inquiry various statements were recorded including the statement of the present petitioner who was one of the two co-delinquents, as a result of which the impugned order at Annexure-A of dismissal from service was passed by the appointing authority. This was confirmed in appeal by the appellate authority, the order whereof is at Annexure-D to the petition.

3. Learned counsel for the petitioner in support of the grounds taken in the memo of the petition refers to and relies upon Rule 44 of the Railway Protection Force Rules, 1959. However, what is relevant is that the said rules were replaced by the Railway Protection Force Rules, 1987, and in this context the relevant rule would be rule 153. The said rule deals with "Procedure for imposing major punishments". Relying upon the various clauses of the said rule, learned counsel for the petitioner contends that the said rule mandatorily contemplates an inquiry as per the procedure prescribed, and in the absence of such an inquiry the order of dismissal from service is not sustainable. However, learned counsel for the petitioner has clearly ignored the scope and effect of rule 161 of the said Rules. The said rule 161 provides for "Special procedure in certain cases". The said rule reads as under:

"Notwithstanding anything contained anywhere in these rules -

- (i) where any punishment is imposed on an
enrolled member of the Force on the
ground of conduct which has led to his
conviction on a criminal charge; or
- (ii) where the authority competent to impose
the punishment is satisfied for reasons
to be recorded by it in writing that it
is not reasonably practicable to hold an
inquiry in the manner provided in these
rules;
- (iii) where the President is satisfied that in

the interest of security of State and the maintenance of integrity in the Force, it is not expedient to hold any inquiry in the manner provided in these rules.

the authority competent to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit.

4. It is relevant to note that the opening phrase in the said rule is "Notwithstanding anything contained anywhere in these rules". It obviously goes without saying that the provisions of Rule 161 have an over-riding effect over rule 153. It only requires to be ascertained whether the facts and circumstances of the particular case justify not holding an inquiry within the clauses contemplated by the said rule. In this context clause (2) is relevant and brought into effect by the disciplinary authority itself.

5. In the context of the facts of the case, it is necessary to refer to the order of dismissal at Annexure-A. The salient features which emerge from the order are to the effect that the delinquent failed to maintain absolute integrity and code of conduct and that he aided and abetted in the commission of offence of theft of railway material valued at Rs.14,438/- from Railway Store, Pratapnagar, on the night of 20/21st June 1988, inasmuch as the stolen railway material was brought back by the delinquent from the receiver's shop and handed over to Head Constable Anil Damore of Pratapnagar at about 0430 hours on 24th June 1988. Subsequently, as admitted by the delinquent himself, he went back to the receiver's shop where he kept his cycle.

6. The said order furthermore records that the delinquent had given a statement on 29th June 1988 and had given such statement voluntarily in the presence of (1) Assistant Security Commissioner, Baroda, (2) Inspector HQ RPF Baroda and (3) Inspector "R" Colony, Baroda, wherein he admitted the above facts of his having gone to the shop of the receiver, taken back the stolen railway material and after handing over the same to Head Constable Anilkumar Damore and leaving the place for his residence after taking his cycle from the receiver's shop. The order of dismissal further states that on a personal interrogation by the disciplinary authority (Divisional Security Commissioner) on 30th June 1988, the delinquent admitted his guilt.

7. It was on the aforesaid inculpatory and

confessional statements and the oral admission by the delinquent that the disciplinary authority came to the conclusion that the delinquent has himself admitted his guilt voluntarily and that the co-delinquent Head Constable Anilkumar Damore has also correlated these admissions of the delinquent, and that these admissions were made voluntarily without any duress, compulsion or pressure in the presence of two senior gazetted officers and two inspectors of RPF, and it was for these reasons and on the particular facts of the case that the disciplinary authority came to the conclusion that it is not reasonably practicable nor is it necessary to hold a regular inquiry as provided by Rule 153 of the RPF rule 87, since the guilt has been admitted by the delinquent on his own volition and no witnesses are required to be examined in the case. It was on the basis of the aforesaid material that the disciplinary authority arrived at a satisfaction that the delinquent was guilty of aiding and abetting the theft of railway property and therefore, passed the punishment of dismissal. It is also pertinent to note that the disciplinary authority has specifically recorded in para 8 of his decision that he has decided to dispense with the formality of regular inquiry in view of the powers vested in him under Rule 161 (ii) of the RPF Rule 87 read with Article 311(3) of the Constitution of India.

8. As aforesaid, this order of dismissal was challenged before the appellate authority, which dismissed the appeal and hence the petition.

9. Learned counsel for the petitioner seeks to place reliance upon two decisions of the Supreme Court viz. Jaswantsing Vs. State of Punjab & Others (AIR 1991 SC p.385) and Union of India Vs. Tulsiram Patel (AIR 1985 SC page 1416).

10. Obviously there cannot be any controversy about the principles laid down by the aforesaid decision. However, it is not necessary to examine these decisions in greater detail for the simple reason that the said decisions have been referred to and discussed in a decision of a Division Bench of this Court relied upon by the learned counsel for the appellant viz. the decision in Special Civil Application No.1264/86 (Group) decided on 28th August 1991. The Division Bench in paragraph 4 and 5 of its decision only observed that though the Supreme Court decisions did permit the dispensation of a regular inquiry, the authority is not expected to dispense with the same lightly or arbitrarily or merely in order to avoid holding an inquiry because the case of

the government is weak or is like to fail. However, the relevant observation is to the effect that where the disciplinary authority satisfied that it is not reasonable, practicable or necessary to hold any inquiry, whether in a given case, such satisfaction can be said to be proper or not depends upon the facts and circumstances of each case.

11. It is pertinent to note that the disciplinary authority has not dispensed with the inquiry merely because it is impracticable to do so. The disciplinary authority has recorded a subjective satisfaction on the facts of the case that it is not necessary to hold any inquiry in view of the confessional statements of delinquent, supported by the confessional statement of co-delinquent. Thus, the aforesaid decisions would be of no assistance to learned counsel for the petitioner.

12. Learned counsel for the petitioner then sought to contend that the so-called confessional statements which are relied upon by the disciplinary authority are obtained by pressure, coercion and/or "statements obtained by force".

13. Firstly, these are merely oral contention raised before me, and a close scrutiny of the record of the petition discloses an entirely different picture. Firstly no contention was taken before the disciplinary authority that the confessional statements were obtained by coercion, pressure or by use of force. It is also pertinent to note that these statements were not sought to be retracted by the delinquent at any stage.

14. It appears that this or a similar contention was raised before the appellate authority, which has been dealt with on the facts and circumstances of the case by the said authority. While doing so the appellate authority has further observed that such statements were not merely recorded in the presence of senior officers of the RPF, but that it was also explained to him in Hindi.

15. This takes us to the contents of the present petition itself. A close scrutiny of the petition also discloses that there is not the slightest hint or suggestion of an averment that such statements were obtained by coercion, pressure or by force. The only passage which according to the learned counsel for the petitioner would be of assistance is para 5 of the petition. However, a plain reading of said para 5 nowhere and in no possible manner, indicates the remotest challenge to the voluntary nature of the statements made

by the delinquent. The only suggestion in this paragraph is that the statements of other persons have been misinterpreted so as to appear to the authority that the statements have been given against the petitioner. At best this could have a reference to the inculpatory and confessional statements of the co-delinquent. However, as aforesaid, there is not the slightest hint in the entire petition that the inculpatory and confessional statements made before the senior officers of the Railway Protection Force and made by the petitioner himself, were not voluntary. This court is also required to note that the petitioner has not even contended that although they might have been voluntary when the statements were made, they were retracted at a later stage. Even this assertion is absent.

16. Learned counsel for the petitioner then sought to rely upon the judgement of the Criminal Court wherein the delinquent was tried and acquitted. Learned counsel for the petitioner submits that since the criminal court has acquitted the delinquent, the order of dismissal from service must be held to be bad.

17. This submission is clearly based on a misconception of law. It is well settled by now that the outcome of a criminal trial has no direct nexus with the findings of a domestic inquiry. Where the domestic inquiry or as on the facts of the case, the order of punishment on the basis of confessional statements, is sustainable on the face of it, an order of acquittal by a criminal court is of no consequence.

18. It must also be noted that the delinquent was only one of the co-accused in the criminal case, whereas the other co-accused was the co-delinquent viz. Anil Damore, that they were both charged with offences punishable under sections 454, 380 and 114 of IPC. In other words, they were charged with theft, aiding and abetting of theft, with common intention and common purpose. As against this, the only charge against the petitioner in the departmental proceedings was aiding and abetting the commission of theft of railway property, and not a charge of theft of such property. Thus, at best it could be said that the charges in the criminal case against the two co-accused were somewhat larger in arena than the specific charge against the delinquent in the domestic proceedings. It can, therefore, be reasonably said that the order passed by the disciplinary authority as confirmed in appeal has no relation or nexus to the criminal proceedings before the criminal court, or their outcome.

19. There is, therefore, no substance in the present petition and the same is, therefore, dismissed. Rule is discharged with costs.
